

Effective: July 1, 2012

Connecticut General Statutes Annotated Currentness

Title 32. Commerce and Economic and Community Development (Refs & Annos)

Chapter 578. Department of Economic and Community Development (Refs & Annos)

→→ § 32-9kk. Financial assistance for eligible brownfield projects. Definitions. Grant and loan programs. Brownfield remediation and development account

(a) As used in subsections (b) to (k), inclusive, of this section:

(1) “Brownfield” means any abandoned or underutilized site where redevelopment, reuse or expansion has not occurred due to the presence or potential presence of pollution in the buildings, soil or groundwater that requires investigation or remediation before or in conjunction with the restoration, redevelopment and reuse of the property;

(2) “Commissioner” means the Commissioner of Economic and Community Development;

(3) “Department” means the Department of Economic and Community Development;

(4) “Eligible applicant” means any municipality, a for-profit or nonprofit organization or entity, or economic development agency or any combination thereof;

(5) “Financial assistance” means grants, extensions of credit, loans or loan guarantees, participation interests in loans made to eligible applicants by the Connecticut Development Authority or combinations thereof;

(6) “Municipality” means a town, city, consolidated town and city or consolidated town and borough;

(7) “Eligible brownfield project” means the foreclosure, investigation, assessment, remediation and development of a brownfield undertaken pursuant to this subsection and subsections (b) to (k), inclusive, of this section;

(8) “Project area” means the area within which a brownfield development project is located;

(9) “Real property” means land, buildings and other structures and improvements thereto, subterranean or subsurface rights, any and all easements, air rights and franchises of any kind or nature;

(10) “State” means the state of Connecticut;

(11) “Eligible grant recipients” means municipalities or economic development agencies; and

(12) “Economic development agency” means (A) a municipal economic development agency or entity created or operating under chapter 130 [FN1] or 132; [FN2] (B) a nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality; or (C) a nonstock corporation or limited liability company established or controlled by a municipality, municipal economic development agency or an entity created or operating under chapter 130 or 132.

(b) Subject to the availability of funds, the Commissioner of Economic and Community Development may, in consultation with the Commissioner of Energy and Environmental Protection, provide financial assistance pursuant to subsections (e) and (f) of this section in support of eligible brownfield projects, as defined in subdivision (7) of subsection (a) of this section.

(c) An eligible applicant, as defined in subdivision (4) of subsection (a) of this section, shall submit an application for financial assistance to the Commissioner of Economic and Community Development on forms provided by said commissioner and with such information said commissioner deems necessary, including, but not limited to: (1) A description of the proposed project; (2) an explanation of the expected benefits of the project in relation to the purposes of subsections (a) to (i), inclusive, of this section; (3) information concerning the financial and technical capacity of the eligible applicant to undertake the proposed project; (4) a project budget; (5) a description of the condition of the property involved including the results of any environmental assessment of the property; and (6) the names of any persons known to be liable for the remediation of the property.

(d) The commissioner may approve, reject or modify any application properly submitted. In reviewing an application and determining the type and amount of financial assistance, if any, to be provided, the commissioner shall consider the following criteria: (1) The availability of funds; (2) the estimated costs of assessing and remediating the site, if known; (3) the relative economic condition of the municipality; (4) the relative need of the eligible project for financial assistance; (5) the degree to which financial assistance is necessary as an inducement to the eligible applicant to undertake the project; (6) the public health and environmental benefits of the project; (7) relative economic benefits of the project to the municipality, the region and the state, including, but not limited to, the extent to which the project will likely result in a contribution to the municipality's tax base and the retention and creation of jobs; (8) the time frame in which the contamination occurred; (9) the relationship of the applicant to the person or entity that caused the contamination; (10) the length of time the property has been abandoned; (11) the taxes owed and the projected revenues that may be restored to the community; (12) the type of financial assistance requested pursuant to this section; and (13) such other criteria as the commissioner may establish consistent with the purposes of subsection (a) to (k), inclusive, of this section.

(e) (1) There is established a remedial action and redevelopment municipal grant program to be administered by the Department of Economic and Community Development for the purpose of providing financial assistance in the form of grants to eligible grant recipients. Eligible grant recipients may use grant funds for any development project, including manufacturing, retail, residential, municipal, educational, parks, community centers and mixed-use development, and the project's associated costs, including (A) soil, groundwater and infrastructure investigation, (B) assessment, (C) remediation, (D) abatement, (E) hazardous materials or waste disposal, (F) long-term groundwater or natural attenuation monitoring, (G) environmental land use restrictions, (H) attorneys' fees, (I) planning, engineering and environmental consulting, and (J) building and structural issues, including demolition, asbestos abatement, polychlorinated biphenyls removal, contaminated wood or paint removal, and other infrastructure remedial activities.

(2) The Commissioner of Economic and Community Development shall award grants on a competitive basis, based at a minimum on an annual request for applications, the first of which shall be issued on October 1, 2008, and the following to be issued on June first each year, with awards being made by the following January first. The commissioner, at the commissioner's discretion, may increase the frequency of requests for applications and awards depending upon the number of applicants and the availability of funding.

(3) A grant awarded pursuant to this section shall not exceed four million dollars. If the eligible costs exceed four million dollars, the commissioner may request and seek funding through other state programs.

(4) If the eligible grant recipient develops and sells the property, such applicant shall return any money received pursuant to this subsection, to the brownfield remediation and development account established pursuant to subsection

(l) of this section, minus twenty per cent, which such eligible grant recipient shall retain to cover costs of oversight, administration, development and, if applicable, lost tax revenue.

(5) Any eligible grant recipient shall be immune from liability to the extent provided in subsection (a) of section 32-9ee.

(6) The eligible grant recipient may make low-interest loans to a redeveloper, if the future reuse is known and an agreement with the redeveloper is in place and the private party is a coapplicant. Loan principal and interest payments shall be returned to the brownfield remediation and development account established pursuant to subsection (l) of this section, minus twenty per cent of the principal, which the eligible grant recipient shall retain. If the eligible grant recipient provides a loan, such loan may be secured by a state or municipal lien on the property.

(7) Any eligible grant recipients that provide a loan pursuant to subdivision (6) of this subsection shall require the loan recipient to enter a voluntary program pursuant to section 22a-133x or 22a-133y with the Commissioner of Energy and Environmental Protection for brownfield remediation. The commissioner may use not more than five per cent of eligible grant or loan proceeds for reasonable administrative expenses.

(8) Notwithstanding section 22a-134a, the eligible grant recipient may acquire and convey its interest in the property without such recipient or the subsequent purchaser incurring liability, including any such liability incurred pursuant to section 22a-134a, provided the property was remediated pursuant to section 22a-133x or 22a-133y or pursuant to an order issued by the Commissioner of Energy and Environmental Protection and such remediation was performed in accordance with the standards adopted pursuant to section 22a-133k as determined by said commissioner or, if authorized by said commissioner, verified by a licensed environmental professional unless such verification has been rejected by said commissioner subsequent to an audit conducted by said commissioner and provided the subsequent purchaser has no direct or related liability for the site conditions.

(f) (1) The Department of Economic and Community Development shall develop a targeted brownfield development loan program to provide financial assistance in the form of low-interest loans to eligible applicants who are potential brownfield purchasers who have no direct or related liability for the site conditions and eligible applicants who are existing property owners who (A) are currently in good standing and otherwise compliant with the Department of Energy and Environmental Protection's regulatory programs, (B) demonstrate an inability to fund the investigation and cleanup themselves, and (C) cannot retain or expand jobs due to the costs associated with the investigating and remediating of the contamination.

(2) The commissioner shall provide low-interest loans to eligible applicants who are purchasers or existing property owners pursuant to this section who seek to develop property for purposes of retaining or expanding jobs in the state or for developing affordable housing units, suitable for first-time home buyers, incentive housing zones, workforce housing and other residential purposes, as approved by the commissioner. Loans shall be available to manufacturing, retail, residential or mixed-use developments, expansions or reuses. The commissioner shall provide loans based upon project merit and viability, the economic and community development opportunity, municipal support, contribution to the community's tax base, number of jobs, past experience of the applicant, compliance history and ability to pay.

(3) Any loan recipient who is a brownfields purchaser and who (A) receives a loan in excess of thirty thousand dollars, or (B) uses loan proceeds to perform a Phase II environmental investigation, shall be subject to section 22a-134a or shall enter a voluntary program for remediation of the property with the Department of Energy and Environmental Protection. Any loan recipient who is an existing property owner shall enter a voluntary program with the Department of Energy and Environmental Protection.

(4) Loans made pursuant to this subsection shall have such terms and conditions and shall be subject to such eligibility, loan approval and criteria, as determined by the commissioner. Such conditions shall include, but not be limited to,

performance requirements and commitments to maintain or retain jobs or provide a specified number of affordable housing units. Loan repayment shall coincide with the restoration of the site to a productive use or the completion of the expansion. Such loans shall be for a period not to exceed twenty years.

(5) If the property is sold before loan repayment, the loan is payable upon closing, with interest, unless the commissioner agrees otherwise. The commissioner may carry the loan forward as an encumbrance to the purchaser with the same terms and conditions as the original loan.

(6) Loans made pursuant to this subsection may be used for any purpose, including the present or past costs of investigation, assessment, remediation, abatement, hazardous materials or waste disposal, long-term groundwater or natural attenuation monitoring, costs associated with an environmental land use restriction, attorneys' fees, planning, engineering and environmental consulting costs, and building and structural issues, including demolition, asbestos abatement, polychlorinated biphenyls removal, contaminated wood or paint removal, and other infrastructure remedial activities.

(7) For any loan made pursuant to this subsection that is greater than fifty thousand dollars, the applicant shall submit a redevelopment plan that describes how the property will be used or reused for commercial, industrial, residential or mixed-use development and how it will result in jobs and private investment in the community. For any residential development loan pursuant to this subsection, the developer shall agree that the development will provide the affordable housing needs reasonable and appropriate for first-time home buyers or for workforce housing or recent college graduates looking to remain in this state.

(8) The loan program established pursuant to this subsection shall be available to all qualified new and existing property owners. Recipients who use loans for commercial, industrial or mixed-use development shall agree to retain or add jobs, during the term of the loan, unless otherwise agreed to by the Department of Economic and Community Development, the Connecticut Development Authority and the Connecticut Brownfield Redevelopment Authority. The residential developer shall agree to retire the loan upon sale of the units unless the development will be apartments.

(9) Each loan recipient pursuant to this subsection may be eligible for up to two million dollars per year for up to two years, subject to agency underwriting and reasonable and customary requirements to assure performance. If additional funds are needed, the Commissioner of Economic and Community Development may recommend that the project be funded through the State Bond Commission.

(10) The loan program established pursuant to this subsection shall be available to all municipalities and economic development agencies, and the commissioner may modify the terms of any such loan to a municipality or economic development agency to provide for forgiveness of interest, principal, or both, or delay in repayment of interest, principal, or both, when the commissioner has determined such forgiveness or delay is in the best interest of the state.

(g) The Commissioner of Economic and Community Development shall approve applications submitted in accordance with subsection (c) of this section before awarding any financial assistance to an eligible applicant or purchasing any participation interest in a loan made by the Connecticut Development Authority for the benefit of an eligible applicant. Notwithstanding any other provision of this section, if the applicant's request for financial assistance involves the department purchasing a participation interest in a loan made by the Connecticut Development Authority, such authority may submit such application and other information as is required of eligible applicants under subsection (c) of this section on behalf of such eligible applicant and no further application shall be required of such eligible applicant. No financial assistance shall exceed fifty per cent of the total project cost, provided in the case of (1) planning or site evaluation projects, and (2) financial assistance to any project in a targeted investment community, such assistance shall not exceed ninety per cent of the project cost. Upon approval of the commissioner, a nonstate share of the total project cost, if any, may be satisfied entirely or partially from noncash contributions, including

contributions of real property, from private sources or, to the extent permitted by federal law, from moneys received by the municipality under any federal grant program.

(h) Financial assistance may be made available for (1) site investigation and assessment, (2) planning and engineering, including, but not limited to, the reasonable cost of environmental consultants, laboratory analysis, investigatory and remedial contractors, architects, attorneys' fees, feasibility studies, appraisals, market studies and related activities, (3) the acquisition of real property, provided financial assistance for such acquisition shall not exceed fair market value as appraised as if clean, (4) the construction of site and infrastructure improvements related to the site remediation, (5) demolition, asbestos abatement, hazardous waste removal, PCB removal and related infrastructure remedial activities, (6) remediation, groundwater monitoring, including, but not limited to, natural attenuation groundwater monitoring and costs associated with filing an environmental land use restriction, (7) environmental insurance, and (8) other reasonable expenses the commissioner determines are necessary or appropriate for the initiation, implementation and completion of the project. The department may purchase participation interests in loans made by the Connecticut Development Authority for the foregoing purposes.

(i) The commissioner may establish the terms and conditions of any financial assistance provided pursuant to subsections (a) to (k), inclusive, of this section. The commissioner may make any stipulation in connection with an offer of financial assistance the commissioner deems necessary to implement the policies and purposes of such sections, including, but not limited to the following: (1) Providing assurances that the eligible applicant will discharge its obligations in connection with the project; and (2) requiring that the eligible applicant provide the department with appropriate security for such financial assistance, including, but not limited to, a letter of credit, a lien on real property or a security interest in goods, equipment, inventory or other property of any kind.

(j) The commissioner may use any available funds for financial assistance under the provisions of subsections (a) to (k), inclusive, of this section and may use such funds for the staffing, marketing and web site development for the programs established pursuant to subsections (a) to (k), inclusive, of this section and the administration of the Office of Brownfield Remediation and Development established pursuant to section 32-9cc, provided such costs do not exceed four per cent of any such funds authorized.

(k) Whenever funds are used pursuant to subsections (a) to (k), inclusive, of this section for purposes of environmental assessments or remediation of a brownfield, the Commissioner of Energy and Environmental Protection may seek reimbursement of the costs and expenses incurred by requesting the Attorney General to bring a civil action to recover such costs and expenses from any party responsible for such pollution, provided no such action shall be brought separately from any action to recover costs and expenses incurred by the Commissioner of Energy and Environmental Protection in pursuing action to contain, remove or mitigate any pollution on such site. The costs and expenses recovered may include, but shall not be limited to, (1) the actual cost of identifying, evaluating, planning for and undertaking the remediation of the site; (2) any administrative costs not exceeding ten per cent of the actual costs; (3) the costs of recovering the reimbursement; and (4) interest on the actual costs at a rate of ten per cent a year from the date such expenses were paid. The defendant in any civil action brought pursuant to this subsection shall have no cause of action or claim for contribution against any person with whom the Commissioner of Energy and Environmental Protection has entered into a covenant not to sue pursuant to sections 22a-133aa and 22a-133bb with respect to pollution on or emanating from the property that is the subject of said civil action. Funds recovered pursuant to this section shall be deposited in the brownfield remediation and development account established pursuant to subsections (l) to (o), inclusive, of this section. The provisions of this subsection shall be in addition to any other remedies provided by law.

(l) There is established a separate nonlapsing account within the General Fund to be known as the "brownfield remediation and development account". There shall be deposited in the account: (1) The proceeds of bonds issued by the state for deposit into said account and used in accordance with this section; (2) repayments of assistance provided pursuant to subsection (c) of section 22a-133u; (3) interest or other income earned on the investment of moneys in the account; (4) funds recovered pursuant to subsections (i) and (k) of this section; and (5) all funds required by law to be

deposited in the account. Repayment of principal and interest on loans made pursuant to subsections (a) to (k), inclusive, of this section shall be credited to such account and shall become part of the assets of the account. Any balance remaining in such account at the end of any fiscal year shall be carried forward in the account for the fiscal year next succeeding.

(m) All moneys received in consideration of financial assistance, including payments of principal and interest on any loans, shall be credited to the account. At the discretion of the Commissioner of Economic and Community Development and subject to the approval of the Secretary of the Office of Policy and Management, any federal, private or other moneys received by the state in connection with projects undertaken pursuant to subsections (a) to (k), inclusive, of this section shall be credited to the assets of the account.

(n) Notwithstanding any provision of law, proceeds from the sale of bonds available pursuant to subdivision (1) of subsection (b) of section 4-66c may, with the approval of the Governor and the State Bond Commission, be used to capitalize the brownfield remediation and development account created by subsections (l) to (o), inclusive, of this section.

(o) The commissioner may, with the approval of the Secretary of the Office of Policy and Management, provide financial assistance pursuant to subsections (a) to (k), inclusive, of this section from the account established under subsection (l) to (o), inclusive, of this section.

CREDIT(S)

(2007, P.A. 07-233, §§ 3-6, eff. July 1, 2007; 2008, P.A. 08-174, § 5, eff. July 1, 2008; 2011, P.A. 11-80, § 1, eff. July 1, 2011; 2011, P.A. 11-141, § 7, eff. July 1, 2011; 2012, P.A. 12-183, §§ 1 to 4, eff. July 1, 2012.)

[FN1] C.G.S.A. § 8-124 et seq.

[FN2] C.G.S.A. § 8-186 et seq.

Current with enactments from the 2012 February Regular Session and June 12 Special Session

(C) 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

END OF DOCUMENT